

REMARKS

The applicants have carefully considered the Office action dated June 15, 2006 and the references it cites. By way of this Response, claims 13, 29-34, 61, 62, 66, 79, 80, 84, 88, 89 and 94 have been amended, and claims 91, 96-98, 101 and 103 have been cancelled without prejudice to their further prosecution. In view of the following, it is respectfully submitted that all pending claims are in condition for allowance and favorable reconsideration is respectfully requested.

As an initial matter, applicants respectfully traverse the objection to claim 15. While it is true that independent claim 13 recites “digital television equipment,” and that claim 15 provides that the digital television equipment of claim 13 is a set top box that provides an analog output, there is no inconsistency. A set top box providing an analog output can be digital television equipment. Indeed, such set top boxes are widely used today to receive digital television signals and convert those digital signals into analog signals to be presented via an analog television, since analog televisions are widespread legacy devices and owners of those devices often wish to receive digital television programming. Thus, reciting that the set top box of claim 13 is digital television equipment that produces an analog output is not an inconsistency. Rather, it is a reflection of a common circumstance present throughout the country to this day. When seen in this light, it is readily apparent that there is no inconsistency between claim 13 and claim 15. Accordingly, the objection to claim 15 is in error and must be withdrawn.

Turning to the art rejections, the Office action rejected all previously pending claims as being unpatentable over one or more of Aras, U.S. Patent

5,872,588, and one or more of newly cited Ozkan, U.S. Patent 6,031,577, Lotspiech et al., U.S. Patent 6,118,873, Ciciora, U.S. Patent 5,815,297, Williams, U.S. Patent 6,259,443, Ballard, U.S. Patent 5,910,988, Shioda, U.S. Patent _____¹, Thrift, U.S. Patent 6,510,557, Lenihan, U.S. Patent 6,169,843, Saito, U.S. Patent 6,751,221, and Nam, U.S. Patent 5,973,625. The applicants respectfully traverse these rejections.

Independent claim 13 recites a television audience measurement system for digital television equipment comprising, among other things, a software agent adapted to read a program identification (PID) header from a data packet containing a portion of a tuned digital television program to identify the television program tuned by the digital television equipment, wherein the PID header is broadcast with the data packet to enable the digital equipment to tune to a selected one of a plurality of minor channels broadcast in a major channel and the software agent stores at least a portion of the PID header in association with a timestamp. None of the cited art teaches or suggests such a method.

The rejections made in the final Office action are all based on the proposition of modifying Aras to log PIDS. However, the ***U.S. Patent & Trademark Office has already concluded that Aras does not teach or suggest logging PIDs*** as recited in claim 13. In particular, the parent of this application, namely, US patent application serial number 09/076,517 (the

¹ Shioda is not identified on the PTO-892. The Examiner is respectfully requested to provide a full citation to Shioda in a new PTO-892 form to ensure it is fully made of record. It is believed, however, that the reference to Shioda on Page 14 of the Final Office action is in error and should be to Thrift, because Thrift, not Shioda, is discussed in the subsequent paragraphs.

“parent application”) included claims which were copied in an effort to provoke an interference with Massetti, U.S. Patent 5,974,299 (the “‘299 Patent”). The applicants filed a request for reexamination of the ‘299 Patent based on the Aras patent and other references. In the reexamination of the ‘299 Patent (Control No. 90/007,057), the USPTO issued a Notice Of Intent To Issue Ex Parte Reexamination Certificate stating:

The examiner notes that Aras teaches recording private data of MPEG, but the private data is not in a control stream that is used to select the digital streams of the channel, wherein the control stream is used to allocate digital frames to the digital streams. In addition, Aras teaches MPEG, which inherently (as per the MPEG specification) teaches PIDS which are extracted identification codes from a control stream, but *Aras fails to teach or suggest recording the PID ... along with the time [of] reception, in that Aras teaches recording the payload data of the PID, and which has more information than the PID alone. Consequently, there is no motivation to store the PID information of Aras in that the Aras system already has similar information (derived from the payload portion but not the PID per se) stored.*

(Control No. 90/007,057, Notice of Intent to Issue Ex Parte Reexamination Certificate dated April 3, 2006, Statement of Reasons for Patentability and/or Confirmation, Pages 12-13)(emphasis added). Therefore, the USPTO has already concluded that Aras does not teach or suggest recording a program identification (PID) header to identify a television program tuned by digital television equipment as recited in claim 13. On the contrary, as noted by the USPTO in its earlier decision, “*Aras fails to teach or suggest recording the PID ... along with the time [of] reception, in that Aras teaches recording the payload data of the PID, and which has more information than the PID alone.*” (Id.)

In keeping with this finding of the USPTO, the applicants have further refined claim 13 to specify that “the software agent stores at least a portion of the PID header in association with a timestamp.” Therefore, claim 13 specifically recites “a software agent adapted to read a program identification (PID) header from a data packet containing a portion of a tuned digital television program to identify the television program tuned by the digital television equipment, wherein the … the PID header is broadcast with the data packet to enable the digital equipment to tune to a selected one of a plurality of minor channels broadcast in a major channel … [and] the software agent stores at least a portion of the PID header in association with a timestamp.” As noted above, and consistent with the USPTO’s prior determination, Aras *“fails to teach or suggest recording the PID … along with the time [of] reception,”* (Id.) and, therefore, Aras does not teach or suggest the recitations of claim 13.

The final Office action appears to agree with the above analysis and conclusion, but argues that it would be obvious to modify Aras to record and store PIDS in view of Ozkan (see Final Office action, Pages 3-4). In particular, the Office action notes that Ozkan reads PID headers (Id. at Page 3, lines 14-20) and then argues that “it would have been obvious for one of ordinary skill in the art to use PIDs to tune to the minor channels, as taught by Ozkan, in the system disclosed in Aras.” However, while it is certainly true that Ozkan demonstrates that it was known to use PID headers to tune to programs, using PID headers to tune to programs provides no motivation to record and/or timestamp those PID headers in the Aras system. As already pointed out by the USPTO:

Aras fails to teach or suggest recording the PID ... along with the time [of] reception, in that Aras teaches recording the payload data of the PID, and which has more information than the PID alone. ***Consequently, there is no motivation to store the PID information of Aras*** in that the Aras system already has similar information (derived from the payload portion but not the PID per se) stored.

(Control No. 90/007,057, Notice of Intent to Issue Ex Parte Reexamination Certificate dated April 3, 2006, Statement of Reasons for Patentability and/or Confirmation, Pages 12-13)(emphasis added). The Ozkan reference, which merely shows the well known usage of PIDs to tune to programs and is in no way directed toward audience measurement, does not add anything to the Aras reference and, thus, does not change the fact that there is no motivation to store the PID information of Aras because “the Aras system already has similar information (derived from the payload portion but not the PID per se) stored.” The final Office action appears to acknowledge as much in that it only alleges that Ozkan would provide a motivation to use PIDs to tune to programs in Aras, but does not allege that Ozkan provides any motivation to modify Aras to store PIDs. Accordingly, it is respectfully submitted that, consistent with the PTO’s prior determination, the combination of Aras and Ozkan does not teach or suggest storing at least a portion of a PID header in association with a timestamp as recited in claim 13. Accordingly, claim 13 and all claims depending therefrom are in condition for allowance.

Independent claim 61 is also allowable. Claim 61 provides a software agent including instructions to store and timestamp at least a portion of a television program identification (PID) header from a data packet containing a portion of a tuned television program to identify the television program selected for viewing on digital television equipment. As discussed above, the

combination of Aras and Ozkan, alone or in combination with any other reference of record does not teach or suggest instructions to store and timestamp PID headers. Accordingly, claim 61 and all claims depending therefrom are in condition for allowance.

Independent claim 79 is also allowable. Claim 79 recites a method to acquire audience measurement data relative to digital television equipment comprising, among other things, storing and time stamping at least a portion of a television program identification (PID) header from a data packet containing a portion of a tuned digital television program to identify the television program selected for viewing on the digital television equipment. As discussed above, no combination of the cited art teaches or suggests such a method. Accordingly, claim 79 and all claims depending therefrom are in condition for allowance.

Independent claim 62 is also in condition for allowance. Claim 62 recites an apparatus for identifying a viewer selected television program received by digital television program reception equipment which has a data port to export tuned data. The apparatus comprises, among other things, a reader connected to the data port of the digital television reception equipment to read program identifying data tuned by the digital television program reception equipment from among data exported from the digital television program reception equipment via the data port, *wherein the data port operates in accordance with the IEEE 1394 protocol and the program identifying data read by the reader are identifier tags exported with the data in accordance with the IEEE 1394 protocol.* No combination of the art of record teaches or suggests such a reader.

For example, as shown in FIG. 15 of Aras, the home stations of Aras tune channels, collect the AVI information, and then export the tuned programming information to a display and speakers and send the AVI information to a central data collection site. (Aras, Fig. 15, Col. 3, lines 22-27, and Col. 24, line 28 - Col. 26, line41). Thus, while Aras clearly has data ports on digital television equipment (i.e., the home stations); those data ports are not IEEE 1394 (firewire) ports. Moreover, the digital equipment of Aras plainly collects the AVI information *within* the digital television equipment (i.e., the home stations), and, thus, has no need for, and makes no disclosure of, a reader connected to a data port of digital television equipment to read program identifying data from data exported from the digital television reception equipment. Additionally, the program identifying data collected by Aras is AVI codes, not identifier tags exported from the digital television reception equipment in accordance with the IEEE 1394 (firewire) protocol as expressly recited in claim 62. Accordingly, it is clear that Aras does not teach or suggest the recitations of claim 62.

The other art of record fails to overcome the deficiencies of Aras. For example, the final Office action's reliance on Ozkan is misplaced in that it ignores the fact that the Aras home station is digital television reception equipment. Given that Aras already tunes and exports tuned data from its digital television reception equipment (i.e., the home station), there is no reason to look to Ozkan for a teaching of tuning to digital channels as incorrectly stated in the final Office action (see Office action, Page 6). Furthermore, like Aras, Ozkan does not teach or suggest a reader connected to the data port of digital television reception equipment to read program

identifying data tuned by the digital television program reception equipment from among data exported from the digital television program reception equipment via the data port. Nor does Ozkan teach or suggest such a reader wherein the program identifying data read by the reader are identifier tags exported with the data in accordance with the IEEE 1394 protocol.

Accordingly, because Aras and Ozkan both fail to teach these same recitations of claim 62, irrespective of how one combines Aras and Ozkan, one does not arrive at the recitations of claim 62.

Despite the comments made in the final Office action, Saito does not correct the deficiencies of the Aras/Ozkan combination. While Saito certainly describes the use of IEEE 1394 communications in a home network, Saito is not an audience measurement system as incorrectly stated in the Office action. Further, given Aras access to the AVI information *within* the digital television receiving equipment, there is no need for a reader coupled to a IEEE 1394 port of the digital television receiving equipment to record identifier tags exported via the IEEE 1394 port of the digital television receiving equipment. Indeed, the only reason anyone would read the Aras/Ozkan/Saito combination as teaching such an external reader is with a priori knowledge of the invention of claim 62. Of course, such hindsight usage of the teachings of the applicants' invention is not a proper basis for rejecting the applicants' claims.

Accordingly, it is respectfully submitted that claim 62 and all claims depending therefrom are in condition for allowance.

Independent claim 80 is also in condition or allowance. Claim 80 recites a method for identifying a viewer selected television program received by digital television program reception equipment which has a data port to

export tuned data. The method comprises, among other things, reading program identifying data tuned by the digital television program reception equipment from among data exported from the digital television program reception equipment via the data port, wherein the data port operates in accordance with the IEEE 1394 protocol and the program identifying data includes identifier tags exported with the data in accordance with the IEEE 1394 protocol. As discussed above, no combination of the cited art teaches or suggests such a method. Accordingly, claim 80 and all claims depending therefrom are in condition for allowance.

In view of the foregoing, it is respectfully submitted that all pending claims are in condition for allowance.

Before closing, the applicants note that, for the reasons explained in the response to the Office action dated October 19, 2005, the applicants expressly traverse the obviousness rejections made in the Office action as failing to properly identify legally cognizable suggestions for combining the references. Therefore, the applicants respectfully traverse all of the 35 U.S.C. § 103 rejections as improper as a matter of law.

Further, applicants note that claims 61, 62, 66 and 94 have been broadened by removing the means-plus-function elements therefrom to thereby ensure that no claim of this application is construed under 35 U.S.C. § 112, paragraph 6. The amendments to eliminate the means-plus-function elements are broadening amendments and, thus, do not give rise to prosecution history estoppel or in any way limit the scope of equivalents of these claims.

More generally, the applicants note that at least the following amendments are either broadening or clarifying and, thus, not necessary for patentability:

1. The deletion of the phrase "an interface and" from claims 13, 29-34 and 89;
2. The amendments to remove the means-plus-function terms from claims 61, 62, 66 and 94; and
3. The deletions from claims 66, 84 and 88.

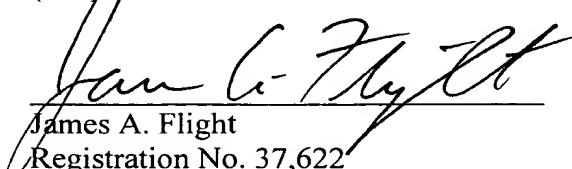
The above noted amendments are either broadening, or are merely clarifying in that the amended claims are intended to state the same thing as the claim prior to amendment (i.e., to have the same scope both before and after the amendments) in a more easily understood or more conventional fashion. Consequently, these broadening or clarifying amendments do not give rise to prosecution history estoppel or limit the scope of equivalents of the claims under the doctrine of equivalents.

If the Examiner is of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is invited to contact the undersigned at the number identified below.

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December 15, 2006